

DAVID L. HENKIN #6876
ISAAC H. MORIWAKE #7141
EARTHJUSTICE
223 South King Street, Suite 400
Honolulu, Hawai'i 96813
Telephone No.: (808) 599-2436
Fax No.: (808) 521-6841
Email: dhenkin@earthjustice.org
Attorneys for Plaintiffs*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

'ILIO'ULAOKALANI COALITION, a)	Civil No. 04-00502 DAE BMK
Hawai'i nonprofit corporation; NA 'IMI)	
PONO, a Hawai'i unincorporated)	SETTLEMENT AGREEMENT AS TO
association; and KIPUKA, a Hawai'i)	ATTORNEYS' FEES, COSTS AND
unincorporated association,)	EXPENSES
)	
Plaintiffs,)	
)	
v.)	
)	
ROBERT M. GATES, Secretary of)	
Defense; and PETE GEREN, Secretary)	
of the United States Department of the)	
Army,)	
)	
Defendants.)	
)	

SETTLEMENT AGREEMENT AS TO
ATTORNEYS' FEES, COSTS AND EXPENSES

* Pursuant to Local Rule 10.2(b), the complete list of parties represented is set forth on the signature page.

WHEREAS, on August 17, 2004, plaintiffs ‘Ilio‘ulaokalani Coalition, Na ‘Imi Pono, and Kipuka filed the above-captioned action alleging that defendants Robert M. Gates, Secretary of Defense, and Pete Geren, Secretary of the United States Department of the Army, violated the National Environmental Policy Act of 1969 (“NEPA”), 42 U.S.C. §§ 4321 et seq., in connection with their decision to convert the 2nd Brigade of the 25th Infantry Division into a Stryker Brigade Combat Team in Hawai‘i;

WHEREAS, on April 25, 2005, this Court entered an order denying Plaintiffs’ motion for summary judgment and granting Defendants’ cross-motion for summary judgment;

WHEREAS, on October 5, 2006, the Ninth Circuit Court of Appeals reversed this Court’s decision in part, holding that Defendants violated NEPA by not considering alternatives that include transformation of the 2nd Brigade outside of Hawai‘i and remanding for preparation of a supplemental site-specific environmental impact statement to consider all reasonable alternatives;

WHEREAS, on July 9, 2007, the Ninth Circuit denied Defendants’ petition for panel rehearing and for rehearing en banc;

WHEREAS, Plaintiffs seek an award of attorneys’ fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, for work performed in the above-captioned matter; and

WHEREAS, in consideration of the terms outlined below, the parties believe it is in their best interest to enter into this stipulation settling Plaintiffs' claims for attorneys' fees and costs,

THEREFORE, in the interests of the public, the Parties, and judicial economy, the Parties hereby stipulate to the following:

1. Defendants agree to settle Plaintiffs' claims for attorneys' fees and costs of litigation for work performed in connection with the above-captioned matter for a total of \$395,000.00.

2. Within ten (10) business days of the execution of this stipulation, Defendants will submit all necessary paperwork for the administrative processing of the payment for \$395,000.00 by Fed Wire Electronic Funds Transfer to "Earthjustice." Payment shall be coordinated with Plaintiffs' attorney of record: David L. Henkin, Earthjustice, 223 South King Street, Suite 400, Honolulu, Hawai'i 96813.

3. Plaintiffs agree to accept payment of \$395,000.00 in full satisfaction of any and all claims for attorneys' fees, costs and expenses of litigation Plaintiffs may have acquired against the Federal Defendants in connection with the above-captioned matter, through and including the date of this stipulation.

4. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to execute this stipulation.

5. By entering into this settlement agreement, Defendants do not waive any right to contest fees claimed by Plaintiffs or Plaintiff's counsel, including the hourly rate, in any future litigation. Further, this settlement agreement does not represent an admission by any Party to any fact, claim, or defense in any issue in this lawsuit. This settlement agreement also has no precedential value and shall not be used as evidence of such in any litigation.

Respectfully submitted this 26th day of September, 2007.

RONALD J. TENPAS
Acting Assistant Attorney General

By: B. G.W. -
BARRY A. WEINER
JAMES D. GETTE
Trial Attorneys
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663
Telephone No.: (202) 305-0469
Fax No.: (202) 305-0274
Email: Barry.Weiner@usdoj.gov

Attorneys for Defendants

DAVID L. HENKIN #6876
ISAAC H. MORIWAKE #7141
EARTHJUSTICE
223 South King Street, Suite 400
Honolulu, Hawai'i 96813
Telephone No.: (808) 599-2436
Fax No.: (808) 521-6841
Email: dhenkin@earthjustice.org

By: /s/ David L. Henkin
David L. Henkin
Attorneys for Plaintiffs

'Ilio'ulaokalani Coalition, et al. v. Gates, et al., Civil No. 04-00502 DAE BMK (D. Haw.); SETTLEMENT AGREEMENT AS TO ATTORNEYS' FEES, COSTS AND EXPENSES